

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
FEB 03 2009


Clerk

UNITED STATES OF AMERICA,

CR 09-40012

Plaintiff,

PLEA AGREEMENT

vs.

DAKOTA BEEF LLC,

Defendant.

The Defendant, the Defendant's attorney, and the United States Attorney for the District of South Dakota hereby submit the following Plea Agreement to the United States District Court, which Agreement was reached pursuant to discussions between the United States Attorney and the Defendant's attorney. The Agreement is as follows:

A. ACKNOWLEDGMENT AND WAIVER OF RIGHTS AND UNDER-

STANDING OF MAXIMUM PENALTIES: The Defendant agrees that it has been fully advised of its statutory and constitutional rights herein, and that it has been informed of the charges and allegations against it and the penalty therefor, and that it understands same. The Defendant further agrees that it understands that by entering a plea of guilty as set forth hereafter, it will be waiving certain statutory and constitutional rights to which it is otherwise entitled.

B. PLEA AGREEMENT PROCEDURE - NO RIGHT TO WITHDRAW

PLEA IF COURT REJECTS RECOMMENDATION: The United States and the Defendant agree that this Plea Agreement is presented to the Court pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure which authorizes the United States to agree that it will recommend, or agree not to oppose, the Defendant's request that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor, does or does not apply. Such agreements and recommendations are not binding on the Court, and the Defendant may not withdraw its plea of guilty if the Court rejects them.

C. PLEA OF GUILTY TO CHARGE: The Defendant will plead guilty to the Information filed in this case, which charges the violation of 8 U.S.C. § 1324a(a)(2). The charge carries a maximum sentence of a \$3,000 fine per alien. There is a \$50 assessment to the victims' assistance fund.

D. VIOLATION OF TERMS AND CONDITIONS: The Defendant understands that if, while these proceedings are pending and until the Defendant completes its sentence, it violates the terms of this plea agreement, engages in any further criminal activity, or fails to appear for sentencing, this plea agreement shall become voidable at the discretion of the United States and the Defendant will face the following consequences:

(1) All testimony and other information the Defendant has provided at any time to attorneys, employees, or law enforcement officers of the United States, to the Court, or to the federal grand jury may and will be used against it in any prosecution or proceeding.

(2) The United States will be entitled to reinstate previously dismissed charges and/or pursue additional charges against the Defendant, and to use any information obtained directly or indirectly from it in those additional prosecutions.

(3) The United States will be released from any obligations, agreements, or restrictions imposed upon it under this plea agreement.

E. GOVERNMENT'S RECOMMENDATION REGARDING SENTENCE –

ANY SENTENCE WITHIN STATUTORY LIMITS: At the sentencing hearing, both the United States and the Defendant are free to recommend whatever sentence each feels is appropriate, within statutory limits, present evidence, and make arguments in support thereof. The Defendant understands that any recommendation made by it or the United States is not binding on the Court. The Defendant further understands that it may not withdraw its plea of guilty if the Court rejects any recommendation.

F. FINE – GOVERNMENT RECOMMENDATION/AGREEMENT TO PAY:

The United States will recommend that the Court impose a fine of \$37,500 (\$2,500 for each of 15 unauthorized aliens). The Defendant hereby agrees to pay said fine at or before sentencing.

G. SPECIAL ASSESSMENT: The Defendant agrees to remit to the U.S. Clerk of Court, 400 S. Phillips Ave., Sioux Falls, SD 57104, no later than two weeks prior to sentencing, a certified or cashier's check payable to the "U.S. Clerk of Court" in the amount of \$50, in full satisfaction of the statutory costs pursuant to 18 U.S.C. § 3013.

H. NO FURTHER PROSECUTION: The United States agrees that there will be no further criminal prosecution of the Defendant in the District of South Dakota based on the information and evidence now available to the United States uncovered in the investigation giving rise to the offense charged in the Information regarding any of the Defendant's conduct with respect to any actual or alleged hiring or harboring of illegal immigrants or of applicants' use of fraudulent identity documents.

I. BASIS FOR PLEA OF GUILTY: The Defendant agrees that the statement of facts, signed by the parties and incorporated herein by this reference, provides the basis for its guilty plea in this case, and is a true and accurate statement of its actions or omissions with regard to the charges to which it is entering a plea, and that the Court may rely thereon in determining the basis for its plea of guilty as provided for in this plea agreement.

J. WAIVER OF SPEEDY TRIAL: The Defendant agrees to waive any rights to a speedy trial under either the United States constitution or the Speedy Trial Act. This waiver is necessary so that the Court will have the benefit of all relevant information at sentencing.

K. PARTIES BOUND: It is further understood and agreed that this agreement is limited to the United States Attorney's Office for the District of South Dakota, and that this agreement cannot and does not bind other federal, state, or local prosecuting authorities.

L. SCOPE OF AGREEMENT: This agreement shall include any attachments, exhibits or supplements designated by the parties. It is further understood and agreed that no additional promises, agreements, or conditions have been entered into other than those set forth in this agreement, and this agreement supersedes any earlier or other understanding or agreement.

M. WAIVER OF DEFENSES AND APPEAL RIGHTS: The Defendant hereby waives all defenses and its right to appeal any non-jurisdictional issues. The parties agree that excluded from this waiver is the Defendant's right to appeal any decision by the Court to depart upward pursuant to the sentencing guidelines as well as the length of its sentence for a determination of its substantive reasonableness should the Court impose an upward departure or an upward variance pursuant 18 U.S.C. § 3553(a).

SUPPLEMENT TO PLEA AGREEMENT

The United States will file a Supplement to Plea Agreement which is required to be filed in every case in compliance with the Court's Standing Order.

MARTY J. JACKLEY
United States Attorney

2/3/09
Date

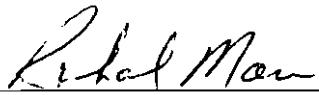


KEVIN KOLINER
Assistant United States Attorney
P.O. Box 2638
Sioux Falls, SD 57101-2638
Telephone: (605)330-4400
Facsimile: (605)330-4410
E-Mail: kevin.koliner@usdoj.gov

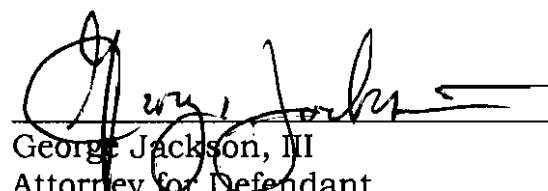
APPROVED:
MARTY J. JACKLEY
United States Attorney
By:


DENNIS R. HOLMES
Chief, Criminal Division

1/29/09
Date


Dakota Beef LLC
By: Richard Morris
Its (title): C. O.
Defendant

Jan 30, 2009
Date


George Jackson, III
Attorney for Defendant